IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5181 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT MUNICIPAL CORPORATION

Versus

K RASIKLAL & CO

Appearance:

1. Special Civil Application No. 5181 of 1990

MR PM THAKKAR for Petitioner No. 1

MR HD VASAVADA for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 04/12/2002

ORAL JUDGEMENT

1. The present petition is preferred by the petitioner against the judgement and order dated 17-6-1989 passed by the Second Extra Assistant Judge, Rajkot in Civil Appeal No.124/1988.

2. The short facts of the case are that the petitioner is a Municipal Corporation and respondent No.1 is a partnership firm, having factory situated in the adjacent area of the plots, which is the subject matter of this petition. The subject matter of this petition is the land admeasuring 1500sq.mtr. bearing plot Nos.1019, 1021, 1023 and 1025 of Survey No.215 p. at Rajkot near Ajee Industrial Estate, adjoining to 80ft. Road. It is the case of the Corporation that the respondent No.1 had made the use of the plots for the purpose of throwing wastage of the factory and as a result thereto, there was unauthorized occupation over the plots and ultimately the proceedings for removal under the Gujarat Public Premises (Eviction of unauthorized occupants) Act, 1972 Gujarat were initiated. The competent authority under the Act passed the order dated 1-12-1988, whereby the eviction was ordered and it was also simultaneously found by the competent authority that the amount for unauthorized use towards compensation would be Rs.28,32,000/= on the basis of Rs.600/= per day x 4720 days. Respondent No.1 had carried the matter before the District Court, which is having power to decide the appeal being Civil Appeal No.124/1988. The appellate Court found that so far as the ownership of the Corporation is concerned, there is dispute pending before this Court and, therefore, the Court held that the land belongs to Rajkot Municipal Corporation and, therefore, the provisions of Gujarat Public Premises (Eviction of unauthorized occupants) Act, 1972 would not apply. So far as the amount of compensation is concerned, the appellate Court found that the six monthly rent of the land in question would be Rs.40/= and, therefore, the approximate amount would come to Rs.1,040/= for the period of 13 years as against the amount of Rs.28,23,000/= fixed by the competent authority under the Act and ultimately the appeal was allowed and the judgement and order of the competent authority was quashed and set aside. Under these circumstances, the present appeal.

3. Before I proceed to examine the rival contentions raised on behalf of both the sides, it would be necessary to take note that pending this petition the petitioner corporation has taken over the possession of the plots in question and as such even from the perusal of the orders of the lower authority it transpires that respondent No.1 never occupied the plots in toto, but the proceedings

were initiated on the ground that the land in question was used for the purpose of throwing wastage of the manufacturing activity of respondent No.1 and as a result thereof there was unauthorized use and occupation to some extent and, therefore, the proceedings were initiated for removal and also for recovering the amount. Since there was no exclusive possession of the aforesaid land in question by respondent No.1, the petitioner corporation has taken over the possession and a statement is made at the bar by Mr.Pahwa, learned Counsel for the petitioner that after taking over the possession of the land in question, the corporation had applied to the State Government for grant of permission to sell the said plots and such permission is granted on 28-6-1996. It has been further submitted by the Counsel that thereafter, pursuant to the permission granted by the State Government to sell the plots, the petitioner Corporation has sold the same on 2-1-1997 at the rate of Rs.300/= per sq.mt. In all it would come to about Rs.4,50,000/=, and as a result thereof the Corporation has realised the price of the plots and the possession of the plots in question is neither with the respondent, nor with the Corporation. Possibly on account of the said development, when this matter was heard before the earlier Bench (M.S.Shah, J.), it has been submitted by the learned Counsel appearing for both the sides, in view of suggestion of this Court (M.S.Shah, J.) a proposal was made by the respondent to settle the matter by paying a lumpsum amount of Rs.2,00,000/=. Even on 6-12-2001 this Court (D.A.Mehta, J.), while adjourning the matter to 20-12-2001, has passed the following order:

> "Mr.Pahwa for the petitioners states that the Respondent made a proposal to settle the matter by making a payment of the offered amount of Rs.2 lacs. The matter is under active consideration of the petitioner Corporation. Mr.Pahwa seeks time in the circumstances. S.O. to 20-12-2001."

4. Mr.Raval, learned Counsel for respondent No.1 has placed on record the written instructions from his client dated 5-8-2001, which is annexed with the another letter dated 2-8-2001, whereby the willingness is shown to pay Rs.2,00,000/= to Rajkot Corporation as full and final settlement of the amount and to put an end to the litigation in response to suggestion of this Court (M.S.Shah, J.). The said letter dated 5-8-2002 together with the communication dated 2-8-2002 is already taken on record and Mr.Pahwa, during the course of hearing, has also produced on record the copy of the permission dated 28-6-1996 of the State Government for disposal of various

plots including the plots in question. Therefore, I find that there is material on record to support the aforesaid submission made by both the sides that during the course of the hearing the aforesaid suggestion was made.

5. In view of the aforesaid, when it was put to the learned Counsel for the petitioner as to whether the Corporation is agreeable for accepting the offer made by respondent No.2 pursuant to the suggestion made earlier or not, Mr.Pahwa, in response to that, submitted that he has instructions to leave the matter to the Court, but it is not possible for the Corporation to give express concession for such matters.

6. Considering the above facts and circumstances, and the perusal of the order passed by the competent authority as well as the appellate authority, shows that respondent No.2 has never occupied the plots in question in toto and for some period, the wastage was dumped or thrown in the plots in question and the same has resulted into the present litigation. Further, it appears that the market value as realized in 1997 of the plots in question is Rs.4,50,000/=, which comes to around Rs.300/= per sq.mt. As against the same, the competent authority has assessed the rent on per day basis @ Rs.600/=. In my view, if the market value of the property in the year 1997 is Rs.300/= per sq.mt., by no stretch of imagination, it can be said that the rental value would be Rs.600/= per day. Normally, even if the standard methods are applied for fetching the rent, it would be in the range of 10% to 12%, which would be roughly around Rs.45,000/= per year. The aforesaid figure can be assessed only if there is no dispute on the point of ownership and further if the property is occupied by having exclusive possession thereof. The perusal of the order and the record as referred to in the orders of competent authority and the appellate authority shows that for some period, the land in question was used for throwing wastage and therefore, naturally the amount of regular rental income cannot be same in comparison to using or rather occupying the plots for throwing wastage by respondent No.1. There is no sufficient evidence on record to show that the land was occupied for a fixed period of 13 years and the land was occupied by way of exclusive possession. Though there was a dispute of ownership, but even if the dispute of ownership is accepted in favour of the Corporation, it cannot be said that the Corporation would be entitled to the compensation to the amount of full rental value or full standard rent, which may be available on the basis of the valuation of the property. Considering the facts and

circumstances of the case, and with a view to see that the Corporation may also not be required to be dragged into further litigation, I find that the payment of Rs.2,00,000/= to the petitioner Corporation, as suggested before the earlier Bench is reasonable, because the period involved in the matter is 13 years and, therefore, monthly charge for throwing the wastage in the plots in question would roughly come to around Rs.15,000/= to Rs.16,000/= per year.

7. Therefore, considering the above facts and circumstances of the case, and in view of the peculiar circumstances of the case that the plots were never occupied in toto and were used only for throwing wastage for some time and that the plots are subsequently sold and the market value realized is only Rs.300/= per sq.mt., I find that the following directions would meet with the ends of justice:

7.1) Respondent No.1 shall pay an amount of Rs.2,00,000/= to the petitioner Corporation as full and final settlement within a period of two months from today.

7.2) If the amount is paid within the stipulated period, the orders passed by the competent authority as well as by the appellate authority shall not remain in operation.

7.3) If respondent No.1 fails to deposit the amount within the stipulated time as ordered earlier, it will be open to the petitioner Corporation to recover the full amount as ordered by the competent authority.

8. The petition is disposed of in terms of the aforesaid directions. Rule is made absolute accordingly. No costs.

4-12-2002 (Jayant Patel, J.)

vinod